

NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR 07-900

THEODORE ANDERSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered FEBRUARY 20, 2008

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT,
[NO. CR-05-476-2]

HONORABLE GARY M. ARNOLD,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Theodore Anthony Anderson was tried before the bench in Saline County Circuit Court and found guilty of residential burglary, domestic battery, and rape. Appellant challenges only the rape conviction. Appellant broke into the residence of his former girlfriend, E.T., on the morning of June 21, 2005, physically attacked her, and engaged in two separate sexual acts with her. Appellant contends that the rape conviction is not supported by sufficient evidence of forcible compulsion. He contends, as he did at trial, that the sexual acts were consensual. The trial court disagreed. After reviewing the evidence under the proper standard of review, we affirm.

Arkansas Code Annotated section 5-14-103(a)(1)(A) states: “A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person: . . .

By forcible compulsion.” “Forcible compulsion” means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person. Ark. Code Ann. § 5-14-101(2). Our supreme court has defined “physical force” as any bodily impact, restraint or confinement, or the threat thereof. *Freeman v. State*, 331 Ark. 130, 132, 959 S.W.2d 400, 401 (1998). The test to determine if there was physical force is whether the act was against the will of the party upon whom the act was committed. *Freeman*, 331 Ark. at 133, 959 S.W.2d at 401. Furthermore, a rape victim’s testimony alone is sufficient and is substantial evidence to support a rape conviction as long as it meets with every element. *Ellis v. State*, ___ Ark. ___, ___ S.W.3d ___ (Jan. 12, 2006). With this standard in mind, we now look to the present case.

When an appellant challenges the sufficiency of the evidence to support a conviction on appeal, this court's test is whether there is substantial evidence to support the verdict. *Britt v. State*, 83 Ark. App. 117, 118 S.W.3d 140 (2003). Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another. *Id.* In determining whether the evidence is substantial, evidence is viewed in the light most favorable to the State, considering only the evidence that supports the verdict. *Id.* The means to challenge the sufficiency of the evidence is via a motion pursuant to Ark. R. Crim. P. 33.1(a) (2006).

In this case, E.T. testified that she had known appellant for several years and had lived with him for the two years leading up to this attack. However, by early June 2005, their

relationship had ended. E.T. moved back home with her parents, taking her two young daughters with her. One of the girls was conceived with appellant.

Due to allegations of prior domestic abuse, E.T. acquired an ex parte order of protection against appellant on June 6. Nonetheless, at approximately 7:30 a.m. on June 21, after E.T.'s parents had left for work, appellant broke through the door and entered the living room where E.T. and her two daughters were sleeping. She awoke to her daughters screaming, and appellant threw her to the floor and began hitting her in the face. The victim said that appellant demanded that she undress, in front of the girls. E.T. ran to her parents' room, but appellant burst in, threw her on the bed, and choked her with his hands. He repeatedly told her that this was her "last day." E.T. lost consciousness for some period of time. Thereafter, she was forced to get up on her knees and perform oral sex on appellant. Appellant threatened to kill her if she fought him. Thereafter, he forced her face-down on her parents' bed, whereupon he forced anal sexual intercourse with her, which they had never done when they were in a relationship with one another.

When the sex acts ceased, they went to the kitchen, where appellant was looking for a knife to kill her and himself. The children were watching their naked mother at this time. E.T. said she was trying to converse with appellant to calm him down, suggesting that they get counseling and offering to remove the order of protection. She suggested that they take the girls to the park. She believed he intended to kill her, because appellant told her that her parents would be available to care for the girls in her absence.

Once she saw how beat up her face was, E.T. asked to go to the hospital, but appellant refused. He allowed her to get dressed and put contacts in her eyes because he had broken her glasses. As soon as E.T. was able to get into the car with her children, and convince appellant that she would meet him at another location in town, she sped off to a local gas station, where she called her mother. E.T. vehemently denied this was consensual sex. Rather, she said she took a beating and was raped. Color photographs of her face and neck were taken, depicting significant bruising around her eye and ear and lacerations to her neck.

Appellant testified, admitting that they engaged in a fight and that he hit her, but stating that she voluntarily had sex with him. He said he was upset with E.T. because she was involved in another relationship. Appellant testified that he was aware of the order of protection.

On this evidence, the trial court found that the State had proved beyond a reasonable doubt that appellant had committed rape by forcible compulsion against the victim by forcing oral and anal sexual contact. Appellant contends that the evidence is insufficient because there was “a fundamental lack of fear” showing “apparent lack of resistance or outcry.” We disagree. The fact-finder was the sole determiner of credibility, which is particularly important in a rape case where the defense is consent. *See Spencer v. State*, 255 Ark. 258, 499 S.W.2d 856 (1973). In this case, there was evidence given by this woman, who was awakened from sleep by a physical attack on her person, followed by two sexual acts. Her testimony of forcible compulsion was believed, and this is sufficient to sustain the finding of guilt.

We affirm appellant’s conviction for rape.

GLADWIN and HEFFLEY, JJ., agree.